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Appendix

**STATEMENT BY CARL MARCY BEFORE THE SUBCOMMITTEE ON
SEPARATION OF POWERS OF THE SENATE COMMITTEE ON THE
JUDICIARY**

MR. ABOUREZK. CHAIRMAN

Thursday, March 11, 1976

MR. CHAIRMAN, I speak to the subject of Congressional access to, and control and release of, sensitive government information. My qualifications consist of eight years experience in the Department of State and 23 years on the staff of the Senate Committee on Foreign Relations.

When I first came to work for the Senate in 1950 I was struck by the fact that an oath to support and defend the Constitution of the United States was required before I could collect any salary.

A similar, if not identical, oath had been required in the Department of State before entering on duties there.

I refer to this now because in discussing congressional access to, and release of, sensitive information, I do so in the belief that members, and employees, of Congress are just as trustworthy and loyal, as are officers and employees of the Executive Departments. Furthermore, they are subject to the same laws.

I have the impression from reading the press in recent weeks, however, that sensitive information given to the Congress always leaks; that sensitive information in possession of the Executive Branch is always safe and protected.

This I maintain is not so.

The ratio of leakers to secret-keepers in the Legislative branch of government is about the same as the ratio in the Executive Branch.

The Impression that the Congress is an open spigot serves the desires of many Executive officials. Unfortunately a good many members of Congress promote the myth. There are a number of reasons why it is assumed Congress leaks and the Executive is a tight drum. For example, written "leaks" in the Executive Branch are called "declassifications".

When a low level official who has stamped "SECRET" on a paper, decides to leak it he can by relatively simple means, de-classify it.

Oral "leaks" in the Department of State are called "back grounders", or, if an Executive official really wants to get the information but, a "backgrounder" may become a "deep backgrounder". And for the really important leak, a high level officer may 'phone or meet with a trusted correspondent or columnist.

In short, the word "leak" - meaning the release of sensitive government information - has a special meaning when applied to Congress. It means that someone has said or written something which the Executive Branch doesn't like having made public. It may or may not have anything to do with national security.

As a matter of fact, I have some difficulty in recalling congressional leaks of information which could fairly be branded as damaging to the national security.

Philip Agee, a former employee of the CIA spilled the beans on the names of CIA Agency chiefs abroad.

Daniel Ellsberg, a former employee of the Pentagon and the Rand Corporation was responsible for publication of the Pentagon Papers; in fact he had tried for some months without success, to get several Members of the Senate to make the Papers public. It was the White House which inaugurated telephone taps and personal surveillance to try to find leakers in the National Security Council.

I make these points not to exacerbate conflict between the Congress and the Executive, but to note that there are enough charges and counter-charges to go around. If we continue to debate who leaks most, we may overlook the more important question The question of what, if any, information should be kept from the people by a representative Government.

On the question of congressional access to "sensitive government information", (a phrase which I will abbreviate by calling the information "secrets"), there are, I believe, very few secrets which should remain the exclusive prerogative of the Executive. There are very many "secrets" which have been kept which, in time, we wished had been made public. I suppose most members of Congress have been told by an Executive official at one time or another: "If you knew what I know, you would agree with me; but I can't tell you what I know because it is secret." The other side of this coin is the Member of Congress who may respond by saying: "Don't tell me your secret because I may have guessed it already. If you tell me your secret and swear me to secrecy, then I can't speak publicly on what I may already have guessed!"

I have no solution for this dilemma except to note it could not occur if our society had not become so prone to secrets already.

Some years ago I recall an official of the State Department told the Foreign Relations Committee that the Department had information to support its request for funds, but couldn't tell the Committee what the Information was. The response was that if the Committee couldn't get the information it needed from the State Department, then it was essential that the Committee begin to create Its own counterpart to the Foreign Service. The suggestion that the Foreign Relations Committee have its own foreign services was threat enough and the information was supplied which theretofore was so secret the Committee, couldn't be told.

My point is that unless the Executive Branch of the Government in the field of foreign policy isn't reasonably forthcoming in making information which it collects available-to the Congress, the Congress will surely develop its own means to collect information. That will complicate the conduct of foreign policy. In the long run, the Executive will

probably be better off by trusting the Congress with its secrets, and putting up with a few leaks, than in paying the otherwise inevitable prices - the price of lack of trust; the price of not being able to persuade the Congress of the need for specific foreign policy measures; and the price of creating a separate information collecting establishment in competition to some extent with the foreign service.

I address now the question of what is sensitive material, and whether it is properly so. At the risk of seeming naive, I suggest that in recent years we as a society have become obsessed with secrecy; as a democratic society it might be better if we were obsessed with the need for candor. We call ourselves an "open society", the Soviet a "closed society". Yet over the past two decades it is my impression that the Soviets have been more, successful in keeping their society "closed" than the U.S. has been in keeping its society "open". I don't like our trend toward a closed society.'

The Webster dictionary synonyms for the word "secret" are covert, stealthy, furtive, clandestine, surreptitious, and underhanded. Except in time of war, I don't want my Government to be that way with any nation, and-I certainly don't want those words to characterize relationships between the Executive and the Congress.

One of the dangers of an obsession with secrecy is that those -who keep the secrets or acquire them are likely to believe they have come into possession of truth. A secret piece of information can be absolutely false, yet the fact that it is secret makes it seem to be true not only to the holder of the secret, but to the individual or agency which acquires the secret. I note this as a warning to congressional committees so that they do not easily believe that access to secret information is access to truth.

I suppose one reason I feel strongly that secret information must be kept to absolute minimum is that secret information is not subjected to the test of the market place. Presidents are as prone to be taken in by secrets as are members of the Congress. I found a certain irony in the situation described a few days ago which told, how President Lyndon Johnson had been taken in by the regimental commander at Fort Bragg who kept secret the fact that the troops the President bid farewell to en route to Vietnam were in fact a group of just returned veterans. How much more appropriate it would have been if the regimental commander had made his secret public that the troops scheduled for departure for Vietnam might have made a mess of the carefully planned departure because they were on a farewell drunk.

The need for Congress to have access to secret or sensitive information when it legislates in the field of foreign policy is much greater than is necessary in the area of domestic policy.

Legislation in the area of domestic policy can be based on information, generally available to the careful observer. He can see poverty, observe the status of the agricultural and business economy, and can form judgments as to whether domestic legislation is working effectively.

This is not so with respect to foreign policy. The Congress kept pouring men and money into Vietnam because the Generals, the intelligence men, and occasional visitors to

Vietnam from the White House could always see light at the end of the tunnel. The few Congressmen who visited Vietnam had a hard time getting close enough to the front to find the tunnel, let alone peer through it. So all they could do was to act on the basis of the Information available to them which was dished out as necessary by the Executive. Much the same thing has been true with respect to foreign aid programs. When an aid program failed In some respect, the failure was overseas where few Americans could observe it.

I recall the shock that overtook a group of Senators some years ago when we visited an area In India where a large number of the tanks and half-tracks destroyed in the Indo-Pakistan war had been assembled. When they saw the shattered remains of American-supplied military equipment which had been given to both sides of the conflict they vowed never again to support a U. S. military assistance program. To see was to acquire information not otherwise available.

The Foreign Assistance Act of 1961 starts out with a section entitled: "Statement of Policy". Over and over again in that section one finds the phrase: "Congress declares it to be the policy of the United States. . ."

Congress can't make policy without the best information it can get. That simple proposition underlies the problem of this Subcommittee.

If we, want to change our system so that basic laws will read: "The President declares It to be the policy of the United States . . .", the Congress can get along without access to sensitive information; indeed, it could get along without any information at all in fact we could then get along without Congress.

The statement of Lincoln that "government of the people, by the people, for the people, shall not perish from earth" will be of historic significance, that's all.

I am far more fearful of the capacity of this nation to survive in freedom if we enshrine secrecy than if we enshrine openness. For that reason as I look at the subject of your hearings - "access to, and control and release of, sensitive government Information" - I find myself strongly Inclined to resolve each practical question in the direction of giving the American people and their representatives more information, not less.

We have come a long way from the time when Woodrow Wilson could refer in all seriousness to the desirability of open covenants, openly arrived at. As a matter of fact, anyone who now speaks of open diplomacy is viewed as some sort of boob. Secrets are the order of the day. The ideal diplomat is the Ambassador who was once described by Sir Henry Wooten as "an honest man sent abroad to lie for his country.

I want the United States to be the most open government in the world. That has been the source of our strength in the past and we ought to do all we can to keep it that way.
